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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Mentholatum Company,

Opposer,

v.

Therox, Inc.,

Applicant.

Opposition No.: 91/160,810

78/116,976

OPPOSER'S NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(E)

Opposer, by its attorney, hereby relies, pursuant to Trademark Rule 2.122(e), on the following registrations to show that Applicant's competitors have commonly adopted and registered marks for cosmetics goods in class 3 and acne preparations in class 5:

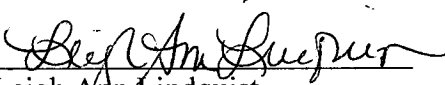
<i>Mark</i>	<i>Registration Number</i>	<i>Issue Date</i>
PETER THOMAS ROTH	2,355,400	June 6, 2000
PETER THOMAS ROTH	2,355,397	June 6, 2000
E. EXCEL ELEMENTE	2,450,908	May 15, 2001
M.D. FORMULATIONS	1,814,638	January 4, 1994
PHYSICIAN'S CHOICE	2,403,056	November 14, 2000

This Notice of Reliance is accompanied by copies of TARR information for each of the foregoing registrations obtained from the United States Patent and Trademark Office website.

02-06-2007

Respectfully submitted,

THE MENTHOLATUM COMPANY

By: 
Leigh Ann Lindquist
Attorney for Opposer
SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tele.: 202-663-7409

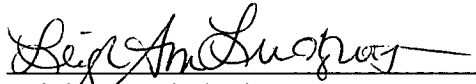
Date: February 6, 2007

Enclosures: TARR information for Registrations (5)
Certificate of Service

CERTIFICATE OF SERVICE

I, Leigh Ann Lindquist, Esquire, hereby certify that on this 6th day of February, 2007, a true and correct copy of the foregoing **OPPOSER'S NOTICE OF RELIANCE PURSUANT TO TRADEMARK RULE 2.122(E)** has been properly served, via First Class U.S. Mail, postage prepaid and fax to:

Tawnya Wojciechowski, Esq.
TRW Law Group
19990 MacArthur Boulevard, Suite 1150
Irvine, CA 92612


Leigh Ann Lindquist

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-02 13:31:28 ET

Serial Number: 75799695 Assignment Information

Registration Number: 2355400

Mark (words only): PETER THOMAS ROTH

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2006-09-07

Filing Date: 1999-09-14

Transformed into a National Application: No

Registration Date: 2000-06-06

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2006-09-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. PETER THOMAS ROTH LABS, LLC

Address:

PETER THOMAS ROTH LABS, LLC
460 PARK AVENUE, 16TH FLOOR
NEW YORK, NY 10022
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: New York

GOODS AND/OR SERVICES

International Class: 005

Class Status: Active

Acne treatment preparations, anti-inflammatory creams, facial masques for acne treatment, and facial peels for acne treatment

Basis: 1(a)

First Use Date: 1993-05-01

First Use in Commerce Date: 1993-05-01

ADDITIONAL INFORMATION

Name Portrait Consent: "Peter Thomas Roth" is a living person whose consent is of record.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-09-07 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-08-28 - Assigned To Paralegal

2006-06-06 - Section 8 (6-year) and Section 15 Filed

2006-06-07 - Automatic Update Of Assignment Of Ownership

2006-06-06 - TEAS Section 8 & 15 Received

2006-03-24 - Case File In TICRS

2003-08-13 - TEAS Change Of Correspondence Received

2000-06-06 - Registered - Principal Register

2000-03-14 - Published for opposition

2000-02-11 - Notice of publication

2000-01-18 - Approved for Pub - Principal Register (Initial exam)

2000-01-11 - Examiner's amendment mailed

2000-01-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

CHRISTINE M. BAKER

Correspondent

CHRISTINE M. BAKER
MINTZ LEVIN COHN FERRIS, ET AL
666 THIRD AVE
NEW YORK NY 10028
Phone Number: (212) 935-3000
Fax Number: (212) 983-3155

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-02 13:31:51 ET

Serial Number: 75799691 Assignment Information

Registration Number: 2355397

Mark (words only): PETER THOMAS ROTH

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2006-08-29

Filing Date: 1999-09-14

Transformed into a National Application: No

Registration Date: 2000-06-06

Register: Principal

Law Office Assigned: LAW OFFICE 108

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2006-08-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. PETER THOMAS ROTH LABS, LLC

Address:

PETER THOMAS ROTH LABS, LLC
460 PARK AVENUE, 16TH FLOOR
NEW YORK, NY 10022
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: New York

GOODS AND/OR SERVICES

International Class: 003

Class Status: Active

Hair-care products, namely, shampoos and conditioners; skin-care products, namely, cleansers, scrubs, tonics, masques, peels, moisturizers and hydrators, creams, gels, suntanning and sun-care preparations, lighteners, brighteners, lotions, and make-up removers

Basis: 1(a)

First Use Date: 1993-05-01

First Use in Commerce Date: 1993-05-01

ADDITIONAL INFORMATION

Name Portrait Consent: "Peter Thomas Roth" is a living person whose consent is of record.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-08-29 - Section 8 (6-year) accepted & Section 15 acknowledged

2006-08-29 - Assigned To Paralegal

2006-06-06 - Section 8 (6-year) and Section 15 Filed

2006-06-07 - Automatic Update Of Assignment Of Ownership

2006-06-06 - TEAS Section 8 & 15 Received

2006-03-24 - Case File In TICRS

2003-08-13 - TEAS Change Of Correspondence Received

2000-06-06 - Registered - Principal Register

2000-03-14 - Published for opposition

2000-02-11 - Notice of publication

2000-01-18 - Approved for Pub - Principal Register (Initial exam)

2000-01-11 - Examiner's amendment mailed

2000-01-07 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

CHRISTINE M. BAKER,

Correspondent

CHRISTINE M. BAKER,
MINTZ, LEVIN COHN, FERRIS, GLOVSKY ET AL
666 THIRD AVENUE
NEW YORK NY 10028
Phone Number: (212) 935-3000
Fax Number: (212) 983-3155

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-02 13:36:13 ET

Serial Number: 76011203 Assignment Information

Registration Number: 2450908

Mark (words only): E. EXCEL ELEMENTE

Standard Character claim: No

Current Status: Registered.

Date of Status: 2001-05-15

Filing Date: 2000-03-27

Transformed into a National Application: No

Registration Date: 2001-05-15

Register: Principal

Law Office Assigned: LAW OFFICE 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-10-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. E. Excel International, Inc.

Address:

E. Excel International, Inc.
1198 North Spring Creek Place
Springville, UT 84663
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Utah

GOODS AND/OR SERVICES

International Class: 003

Class Status: Active

Cosmetic products, namely, makeup remover, non-medicated acne control cream, toothpaste, lip moisturizer, facial sunscreen, body wash, body lotion, body sunscreen, soap, hand cleanser, hydrating tinted nourishing moisturizer, oil-free tinted nourishing moisturizer, skin whitening cream for day and night, personal deodorant, shampoo, conditioner, styling gel, lipstick, perfume, facial masque, facial cream

Basis: 1(a)

First Use Date: 1999-11-11

First Use in Commerce Date: 1999-11-11

International Class: 005

Class Status: Active

Herbal dietary supplements; medicated acne control cream

Basis: 1(a)

First Use Date: 1999-11-11

First Use in Commerce Date: 1999-11-11

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-10-30 - Case File In TICRS

2001-05-15 - Registered - Principal Register

2001-02-20 - Published for opposition

2001-01-19 - Notice of publication

2000-09-15 - Approved for Pub - Principal Register (Initial exam)

2000-09-08 - Assigned To Examiner

2000-09-05 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

E. EXCEL INTERNATIONAL, INC.
1198 NORTH SPRING CREEK PLACE
SPRINGVILLE, UT 84663

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-02 13:39:53 ET

Serial Number: 74357252 Assignment Information

Registration Number: 1814638

Mark (words only): M.D. FORMULATIONS

Standard Character claim: No

Current Status: This registration has been renewed.

Date of Status: 2004-01-27

Filing Date: 1993-02-05

Transformed into a National Application: No

Registration Date: 1994-01-04

Register: Principal

Law Office Assigned: LAW OFFICE 5

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: SH0 -Office Of Public Record - Special Handling

Date In Location: 2005-01-11

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. BIOCEUTIX INC.

Address:

BIOCEUTIX INC.
71 Stevenson Street, 22nd Floor
San Francisco, CA 94105
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 003

Class Status: Active

cosmetics and skin and hair care products; namely, skin moisturizers, skin cleansers, shampoos, sunscreen preparations, lip balms, nail and cuticle creams, and dead skin removing gels

Basis: 1(a)

First Use Date: 1990-12-22

First Use in Commerce Date: 1990-12-22

International Class: 005

Class Status: Active

acne medications and medicated skin lighteners

Basis: 1(a)

First Use Date: 1991-11-21

First Use in Commerce Date: 1991-11-21

ADDITIONAL INFORMATION

Disclaimer: "FORMULATIONS"

Prior Registration Number(s):

1733914

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-12-27 - Assignment Of Ownership Not Updated Automatically

2006-10-11 - Assignment Of Ownership Not Updated Automatically

2006-01-20 - Attorney Revoked And/Or Appointed

2006-01-20 - TEAS Revoke/Appoint Attorney Received

2005-11-07 - TEAS Change Of Owner Address Received

2004-01-27 - First renewal 10 year

2004-01-27 - Section 8 (10-year) accepted/ Section 9 granted

2003-12-02 - Combined Section 8 (10-year)/Section 9 filed

2003-11-20 - Combined Section 8 (10-year)/Section 9 filed

2000-08-30 - Section 8 (6-year) accepted & Section 15 acknowledged

2000-05-22 - Response received to Post Registration action - Sections 8 & 15

2000-05-27 - Post Registration action correction

2000-05-03 - Post Registration action mailed Section 8 & 15
2000-01-12 - Section 8 (6-year) and Section 15 Filed
1994-01-04 - Registered - Principal Register
1993-10-12 - Published for opposition
1993-09-10 - Notice of publication
1993-07-06 - Approved for Pub - Principal Register (Initial exam)
1993-06-01 - Communication received from applicant
1993-05-20 - Non-final action mailed
1993-04-27 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Kimberly G. Russell

Correspondent

Kimberly G. Russell

Bare Escentuals, Inc.

22nd Floor

71 Stevenson Street

San Francisco CA 94105

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Fax Number: 415.651.9226

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-02-02 14:12:39 ET

Serial Number: 75132677 Assignment Information

Registration Number: 2403056

Mark (words only): PHYSICIAN'S CHOICE

Standard Character claim: No

Current Status: Registered.

Date of Status: 2000-11-14

Filing Date: 1996-07-11

Transformed into a National Application: No

Registration Date: 2000-11-14

Register: Principal

Law Office Assigned: LAW OFFICE 110

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 40S -Scanning On Demand

Date In Location: 2006-08-10

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. PHYSICIANS CARE ALLIANCE, LLC

Address:

PHYSICIANS CARE ALLIANCE, LLC
8501 N. SCOTTSDALE ROAD SUITE 150
SCOTTSDALE, AZ 85253
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: Arizona

GOODS AND/OR SERVICES

International Class: 003

Class Status: Active

non-medicated skin care products, namely, peeling solutions, exfoliating and bleaching soaps, hydrating and photo-protectant lotions, bleaching, anti-inflammatory, anti-redness and lubricating creams, astringents, anti-oxidant moisturizers, bleaching gels and alphahydroxy-acid toners, creams and lotions, all for sale exclusively to licensed health-care professionals for re-sale to their patients

Basis: 1(a)

First Use Date: 1991-02-00

First Use in Commerce Date: 1992-05-11

International Class: 005

Class Status: Active

medicated skin care preparation, namely, soaps for psoriasis and eczema and creams and lotions for acne, wrinkles and skin texture, all for sale exclusively to licensed health-care professionals for re-sale to their patients

Basis: 1(a)

First Use Date: 1991-02-00

First Use in Commerce Date: 1992-05-11

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-10-04 - Automatic Update Of Assignment Of Ownership

2006-08-10 - Case File In TICRS

2000-11-14 - Registered - Principal Register

2000-08-22 - Published for opposition

2000-07-21 - Notice of publication

2000-06-06 - Approved for Pub - Principal Register (Initial exam)

2000-04-06 - Communication received from applicant

2000-02-11 - Letter of suspension mailed

2000-02-03 - Assigned To Examiner

1999-12-15 - Communication received from applicant

1999-05-18 - Letter of suspension mailed

1999-01-04 - Communication received from applicant

1998-07-08 - Final refusal mailed

1997-11-28 - Communication received from applicant

1997-09-17 - Communication received from applicant

1997-05-30 - Non-final action mailed

1997-03-24 - Non-final action mailed

1997-03-20 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Frank G. Long

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FRANK G. LONG

MORRISON & HECKER L.L.P.

2800 N. CENTRAL AVENUE, SUITE 1600

PHOENIX, AZ 85004-1047
